Supreme Court, U.S.
FILED

CASE NO. 07-190 JUN 14 2007

OFFICE OF THE CLERK

THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 2006

MICHAEL CIEKLINSKI AND ALLAN NAIRN,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

May the Appeals Court affirm an *ex post facto* Decision and Order by NLRB "appointees" and a Revised Compliance Determination by a "Regional Director," in over-ruling the Administrative Law Judge and a Board "Chairman" to **vacate** the "ALJ's" Decision, Order, and Compliance Determination **made after the full and fair trial**, proving that **Local Union 357**, the NLRB's *certified exclusive bargaining representative* for all collective bargaining agreement ("CBA") **Employees** - who also administered job-referral procedures for **Employers** - has commited "unfair labor practices" for the sole "benefit" of LU 357's members and the CBA **Employers** who are now liable, with "LU 357," for their "takings" of what are now Petitioners' *damages*, including one Petitioner's preferred *Group One* status on *out-of-work lists* maintained by LU 357.

LIST OF ALL PARTIES

Petitioners/Appellants Michael Cieklinski, and Allan Nairn, and Respondent National Labor Relations Board.

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I. An Administrative Law Judge presided over an NLRB trial and filed a Decision and Order, and Compliance Determination in the charging parties'/plaintiffs' favor, a "Board" *sua sponte* reviewed the "ALJ" rulings - and eviscerated them all, without any trial, in an *ex post facto* Decision and Order (that Board's "Chairman" dissented but was overruled by two remaining Board "members") - and a Regional Director made the Revised Compliance Determination that conflicts with decisions by this Court, and other appellate, and district courts, departs from the usual course of such "judicial proceedings," and requires an exercise of this Supreme Court's powers of supervision.

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STATEMENT OF JURISDICTIONAL GROUNDS

Federal Rule of Appellate Procedure 15(a) provides for appeals from National Labor Relations Board's Decisions and Orders, and includes Compliance Determinations - revised or not - by Regional Directors, and others, delegated or not, as per sections of Labor Management Relations Act §§ 153, and 159 (29 U.S.C. §§ 153, 159), and this Court may review this matter under 29 U.S.C. § 1254(1), and its Rule 10.

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* Respondent NLRB uses NLRA, rather than LMRA cites.

STATEMENT OF THE CASE

The International Brotherhood of Electrical Workers ("IBEW") certifies 40 classifications of "members," but those in affiliated **Inside** local unions ("LUs") violate provisions of IBEW's constitution/contract and rules most, as shown *infra*.

Unfair practices by LU 357 officers and members against Collective Bargaining Agreement ("CBA") Employees LU 357 *was certified, under federal law, to represent* included death threats, assaults, batteries, blacklisting and sabotage, as proved in the Trial of LU 357's officers and members.

A National Labor Relations Board ("NLRB"), created by the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 141, *et seq.*), **certified** LU 357, based in Las Vegas, NV, as the "exclusive bargaining representative" for that entire "Bargaining Unit" of **Inside** construction electricians, which is made up of LU 357 members and "non-members," and LU 357 is "affiliated" with the Washington, D.C.-based IBEW.

LMRA § 158(a)(3) requires LU 357 to offer membership to Bargaining Unit Employees within 30 days, but it is never done, and LU 357 has continued to instead overtly favor its members to the detriment of all CBA Employees *who are not its members*, thereby contradicting LU 357's three **exclusive** roles which are: representing CBA Employees in negotiations for collective bargaining agreements ("CBAs"); administering the CBAs; and administering a CBA "grievance procedure."

But LU 357 also administers job Referral Procedures for CBA Employers and forces Employees who are not members to remove themselves from CBA out-of-work lists, by giving LU 357's members the first and best choices of all available requests for workers, and enforcing **practices** of removing all "non-members" who didn't voluntarily remove themselves to its nefarious "side list" on Group One, and by assaulting, battering, and intimidating non-members with death threats, and including "sabotage" of job-sites if CBA Employers fail to "reject" the ironically-named non-member "book-jumpers" from jobs, for merely accepting job offers in their turn.

Petitioners are not "members" of LU 357, but are parties to the IBEW constitution *via* their memberships in the IBEW and two affiliated local unions. LU 357 is wrongfully acting independently of the IBEW constitution. See *Wooddell v. IBEW L.U. 71*, 116 L.Ed.2d 419 (1991).

That IBEW constitution also provides that any "member" of any affiliated local union may *transfer* their "membership" to any other local union with the same "trade classification" by presenting a transferee local union with a *traveling card*.

That constitution doesn't allow any non-member who has not presented a traveling card or been voluntarily accepted by a transferee union, any "voice," or "vote" in any other local union because local unions are not affiliated with each other.
Local 357, and every other "**Inside**" local union, violates that constitution by rejecting **Inside** members' "traveling cards."

Petitioners worked 20 years and 10 years respectively, in the "Inside" *Bargaining Unit* represented by LU 357, which is bound, by law, to "fairly represent" all CBA "Employees" in negotiating, and administering CBAs, and in administering CBA grievance procedures. *Beck v. Communications Workers of America*, etc., *C.W.A. v. Beck*, 108 S.Ct. 2641 (1988).[1/]

Petitioners *aren't members* of LU 357 but qualify for the highest priority *Group One* on CBA Employers' *out-of-work list* created in **Employees' and Employers'** CBA. LU 357 administers that **List** in a hiring hall as the CBA Employers' designated agent, *despite its exclusive state actor certification by that NLRB*, to "represent" all of the CBA Employees.

LU 357 abuses its NLRB-certified "state-actor" CBA role to force *non-members* like Petitioners to "stand aside" (on its non-CBA Group 1 "side list") if their name is called in order from LU 357's CBA out-of-work list, and LU 357 *members*

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[1] There is no provision in the Act for LU 357 to administer Employers' job referral procedure, a conflict of interest that forces them and other non-members to sign out-of-work lists it administered for CBA Employers "on the side" if any LU 357 members had signed the out-of-work lists behind them.

are behind them. Non-members will be given a second offer if jobs remain after LU 357 *members* accept or reject them.

A second offers to any Employee before another has a "first offer" violates the rights of Employees behind them, in Referral Procedure Groups Two through Four, to accept job offers in their turn, and the abuses poison four CBA Groups.

Bargaining Units are made up of Employees who belong to LU 357, Employees who may belong to other local unions affiliated with the IBEW, and Employees who may belong to no union (or other non-affiliated unions), but qualifications for signing out-of-work-lists in every IBEW local union with the "Inside" trade classification are alike, and all applicants for jobs in a Group are subject to identical sets of standards.

Petitioners **did not stand aside**, and accepted first Group One job offers, but LU 357 officers participated in, aided, encouraged and abetted members to threaten and assault them and contacted Employers to have them *rejected* from the jobs they properly accepted, and threatened CBA Employers who refused to "reject" them from employment with job sabotage.

Petitioners were assaulted in LU 357's parking lot by its officers and members, and were "rejected" from job-sites by Employers who were threatened by LU 357's officers while they were driving to the job-sites they chose, and they then filed *charges* with the NLRB which filed a *Complaint* against LU 357, and two of LU 357's officers.

The NLRB's Administrative Law Judge ("ALJ") presided over the trial, and held Petitioners and a "**defined and easily identified class**" of non-members of LU 357 **must be made whole**, in a Decision and Order, but two Board members and a Regional director then limited that "class," and "damages."

The Board members and the Regional Director nullified the ALJ's and Board Chairman's intent to make all the CBA non-members **whole** in an *ex post facto* Decision and Order, and, with a Regional Director, also **subverted** Petitioners' **damages for lost wages, overtime pay, health and pension benefits pay, and travel Costs, and interest** in a July 15, 2005 Revised Compliance Determination.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted to review Circuit dismissals of a Petition For Review on grounds Petitioners lack standing to challenge the Board's Decision and Order and a "Regional Director's" Revised Compliance Determination. That Board published three "Decisions" from proceedings below out-of-order to confuse and distort the record.

The "Board" deliberately confused the ALJ's Decision, Order, and Compliance Determination with that *ex post facto* internal Decision and Order by itself, and with the Revised Compliance Determination by its venal "Regional Director."

The Board published that ALJ's ethical Decision, Order, and Compliance Determination second to give its self-serving misplaced Decision And Order, and its "Regional Director's" abominable Revised Compliance Determination the credibility it will not get by publishing tainted decisions out of order.

LU 357 **took** a full third of Petitioners' wages for its *dues*, trusts, funds and committees funded in closed-to-non-members meetings, the IBEW's secret agent takes 3% of all wages for a pension fund without authority and contrary to law, despite the fact neither Petitioner is a member, neither is offered membership and separate, independent IBEW has no right to take any monies from Petitioners' earned wages.

The Trial records are full of evidence of subversions of Petitioners' rights, assaults, batteries, blacklistings, bribery, death threats, and sabotage against them and Employers.

The ALJ held LU 357 wrongdoings against non-members violated its duty to represent all applicants for employment fairly and impartially, are convincing evidence of approval, ignored an opportunity to address problems when Cieklinski had a hearing before an "Appeals Committee," and restrained and coerced non-members into surrendering job referrals to LU 357 members. An appeal court erred by misrepresenting Petitioners had not exhausted their administrative remedies where administrative "remedies" were repeatedly exhausted, and Cieklinski even tried for an Appeals Committee remedy.

1) ***LU 357 had no right to administer job referral procedures for CBA Employers, or limit Employees' right to accept jobs.***

LU 357 is an *exclusive bargaining representative* of CBA Employees and had no **standing** to cut a side-deal with CBA Employers to coerce Employees who aren't LU 357 members out of their CBA rights to accept any, or all "job offers." The LMRA's policy "is to insulate employees' jobs from any organizational rights." *Radio Officers' Union of Commercial Telegraphers*, 74 S.Ct. 323, 335 (1954). LU 357 is bound to fairly "represent" all CBA "Employees" in negotiating, and administering CBAs, and administering CBA grievance procedures. *Beck v. Communications Workers of America*, etc., through *C.W.A. v. Beck*, 108 S.Ct. 2641 (1988).

LU 357 serves its own interest rather than the interest of all Employees in administering CBA job referral procedures and it should limit itself to "administering" within the laws.

Non-members who qualify for jobs as Referral Procedure Group One applicants have an exclusive right to "job offers" under the law, and it is ludicrous for LU 357 members, and officers to even suggest - let alone insist - they have a "right" permitting them to assault, batter and blacklist non-members.

LU 357 violated LMRA §§ 158(b)(1)(A) and (b)(2) by encouraging, aiding, and abetting its officers' and members' threats, assaults, batteries and interferences with other CBA Employees who are not its "members."

The Regional Director who wrote a "*Revised Compliance Determination*" misrepresented that "CBAs" are between the "Respondent [union] and various employers" to harass one of the Petitioners for three pages, in the face of facts that he has lived in Las Vegas for 21 years, but had to move his family across the State line to California because of LU 357 threats.

The *Revised Compliance Determination* attacks the ALJ's cogent, fair Decision, Order, and Compliance Determination. The Board is little more than a modern *hydra*, created to free Federal courts from "Actions" by citizens who apparently are not considered sophisticated enough to enjoy a Constitution.

2) *LU 357, IBEW, union affiliates, an NLRB, and Employers can access Employees' CBA records, but Employees may not.*

LU 357 and a Board accessed all Employees' records of wages, dues, trusts, funds and committees but the Employees could not, and Board officers had wonderful "rapports" with LU 357 officers, even introducing Local 357 officers to the presiding ALJ as they came into the courtroom (courtesies not extended to the Petitioners they represented).

The IBEW constitution/contract is with, and between all IBEW and local union "members," and with, but not between all local unions. Thus, personal contact between Petitioners and the ALJ was limited by their counsel even as the counsel extended it to the LU 357 Respondents. In fact, the Board's Regional Director used LU 357 records to attack Petitioners' prevailing Decision, Order and Compliance Determination as it supposedly "represented" them in that Revised Compliance Determination, which was merely a follow-up to that Board's irrational, duplicitous, and damning Decision and Order.

The Board, which ostensibly represented Petitioners, did everything in its power, working in concert with a "Regional Director," to subvert Petitioners' Case, even to the extreme of publishing three decisions into the Board's volumes as one Decision (not even a "caption" for that Case before the ALJ).

In fact an *ex post facto* Decision and Order, by Members and a Board Chairman, was placed first in the NLRB reports even though it was not the result of a "trial," and indicts that Board for not placing it second. The ALJ's Decision, Order, and built-in Compliance Determination that should have been published first as the result of that Trial of the losing LU 357 Respondents, is published second, but an outrageously tainted Revised Compliance Determination is justifiably last.

A Revised Compliance Determination refers to "refused [job] referrals," but the Board "lost th[at] issue" and is now precluded from showing Petitioners had any duty to mitigate. *NLRB v. Laborers' Union*, 748 F.2d 1001 (5th Cir. 1984), *cert. denied*, 479 U.S. 1085, 105 S.Ct. 1845 (1985).

3) *LMRA precedents are limited to "wrongdoings" of unions and employers, but NLRB members, and a Regional Director filed a Revised Compliance Determination abusing facts and law so bad the NLRB itself is causing Petitioners' damages.*

This Court has decided that the NLRB is precluded from even attempting to show that Petitioners refused referrals or had a duty to mitigate any damages caused them by LU 357 or Employers who are parties to CBAs with Employees. See *supra*, at p. 8, *citing NLRB v. Laborers' Union*, 748 F.2d 1001 (5th Cir. 1984), *cert. denied*, 105 S.Ct. 1845 (1985).

The NLRB delegated its authority to itself (a 3-member Board) on December 16, 2004, and agreed LU 357 violated LMRA § 158(b)(1)(A) by restraining and coercing Cieklinski and Nairn into surrendering job referrals to LU 357 members on four dates beginning March 7, 2003, and directed LU 357 to make them whole, but split hairs to avoid identifying other similarly-coerced CBA Group One non-members of LU 357.

Petitioners object to the Board's abuse of **off-point** terms like "traveler," and "stand aside custom" - abused by LU 357 officers - to identify CBA employees not LU 357's members.

That Board ordered LU 357 to (1) cease and desist from: (a) its "side-list" practice; (b) threatening non-members with denial of membership and loss of jobs; (c) restraining and coercing them into surrendering job referrals to LU 357 members; (d) refusing them access to hiring hall "books" and all other records, including "side lists"; (e) requesting employers to not hire non-members; (f) causing employers to refuse to hire non-members; and to: (2)(a) enforce hiring hall practices that do not coerce "non-members" to surrender job referrals; (b) make Cieklinski and Nairn whole, plus interest, for any losses resulting from LU 357's unlawful conduct; (c) provide all records necessary to analyze the amounts of back pay that are due (with federal court interest), and owed them.

On July 15, 2005 an NLRB *Regional Director* provided Cieklinski with a Revised Compliance Determination of *back pay* LU 357 accepted but Cieklinski did not because back pay

inadequate and the venal *Regional Director* then reduced his out-of-work list registration status with LU 357 to **Group Two**, making it impossible for Cieklinski to earn a living.

That *Regional Director* may not abuse the same tortious CBA out-of-work list "registration status" threats and actions LU 357 used to continue denying Cieklinski and Nairn access to jobs and wages, especially since no "big stick" strategy was used on Local 357 and the NLRB confined itself to using the law and its judges and courts, but quickly used abuse-as- method on the two Petitioners, with the same rejection-result.

That *Regional Director* had no "charge," "complaint," or "standing" to launch any personal vendetta against Cieklinski and Nairn for disagreeing with a *Regional Director* over the amounts of damages they incurred as a result of unfair labor practices by a wrongdoing union that *Director* is in bed with.

Cieklinski and Nairn were *the charging parties* before the Board and the two victims of LU 357's wrongdoing may not be attacked freely by a servant of an entity that uses public money to stop wrongs, but now, through a *Regional Director* is misusing public money to abuse those very same victims.

That *Regional Director* interfered with Cieklinski's CBA Group One *standing* by depriving him of his CBA Referral Procedure "out-of-work list" status, and it is impossible to ignore the NLRB, through its venal *Regional Director*, has committed a same "tort" against Cieklinski that LU 357 did.

The NLRB filed a *Charge* and *Complaint* against LU 357 for violating the same laws that *Regional Director* violated by abusing both Cieklinski's status, and his and Nairn's status.

Of course the Board is aware that Cieklinski, Nairn and their families depend on their ability to practice their trade, but attacked with a same venality as LU 357 to deprive them of a same ability, knowing it has the same adverse effects.

A *Regional Director* committed "unfair labor practices" by altering Cieklinski's CBA job Referral Procedure "Group One" status to "Group Two" where he can't survive and it is apparent from that *Director's* fourteen page analysis that Mr. Cieklinski's CBA status isn't a *Regional Director's* business.

4) *The NLRB argued on appeal that neither its unilateral Decision and Order - filed after that ALJ's Decision, Order and Compliance Determination voluntarily participated in by all the parties - nor its Revised Compliance Determination is appealable, and Petitioners agree, but for different reasons.*

NLRB received Cieklinski's and Nairn's Charges against LU 357, investigated, filed *Complaints*, held a "Trial" of LU 357 and its agents, and the ALJ filed a Decision, Order, and partial Compliance Determination of Petitioners' damage, but was removed in favor of an ethics-free "Regional Director."

That should have been the end of the matter, except for possible problems collecting "damages" but an NLRB clearly demonstrated reluctance to award any damages to "victims" other than a charging party who did not welcome associations with Cieklinski or Nairn, and, like LU 357 top officer Davy Jones, considers himself to be a permanent resident of North Carolina, and received "damages" in an unknown amount.

But Petitioners Cieklinski and Nairn did not receive any "damages" offers that even remotely resembled "satisfaction" for ostracizings, assaults, batteries, humiliation, loss of jobs (continuing in Las Vegas), expenses incurred chasing jobs in other CBA jurisdictions or for wages lost in attempts to live off the bottoms of CBA "out-of work lists" that also reacted negatively to the exportations of American industries.

In fact, NLRB's Cornele Overstreet, a Regional Director who had LU 357 punitively reduce Cieklinski's "out-of-work list" status at home from Group One to Group Two, who had no right to discipline Cieklinski, whose "charge" against LU 357 was upheld and acted on by that presiding ALJ, who saw the bigger "case" picture, unlike "hit-person" Overstreet.[2/]

It is very obvious that the NLRB no longer fulfills any role intended by Congress, when it was reduced in 1947, and the federal courts should acknowledge the inadequacy of their intended NLRB "agents," as the Congress did in 1947, and instead give all citizens equal access to those courts.

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[2] The ALJ left before finishing Petitioners' damage awards.

APPENDIX

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Labor Management Relations Act § 158 (29 U.S.C. 158).
Unfair Labor Practice by employer or labor organization
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International B'hood of Electrical Workers ("IBEW")
Constitution Article XX, Sec. 1 13

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U.S. Ninth Circuit Court of Appeals Memorandum,
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Labor Management Relations Act § 158 (29 U.S.C. § 158). Unfair Labor Practice by employer or labor organization (29 U.S.C. §§ 158(a)(3), 158(b)(1)(A), and 158(b)(2).

(a) Unfair labor practices by employer.

It shall be an unfair labor practice for an employer --

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in a labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United states, shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement whichever is the later....

* * *

(b) Unfair labor practices by labor organization.

It shall be an unfair labor practice for a labor organization or its agents --

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein ....

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership ....

International Brotherhood of Electrical Workers ("IBEW")
Constitution Article XX, Sec. 1 and Sec. 3.

ADMISSION OF MEMBERS.

Sec. 1. No Local Union ("L.U.") can admit an applicant who does not reside in, or who is not employed in the trade, in the jurisdiction of the L.U., unless the L.U. is directed to admit him by the I.P. (International President).

* * *

Sec. 3. The acceptance of an application for membership, and the admission of the applicant into any L.U. of the I.B.E.W., constitutes a contract between the member, the L.U. and the I.B.E.W., and between such member and all other members of the I.B.E.W.

International Brotherhood of Electrical Workers ("IBEW")
Constitution Article XXIII, Sec. 1., Sec. 2, and Sec. 10.

TRAVELING CARDS.

Sec. 1. Any member working in a different L.U.'s jurisdiction shall be admitted to its meeting, provided that he presents his official receipt for dues showing he is a member in good standing and he identifies himself as the rightful owner of such receipt, but he will have no voice or vote at such meeting, except as required by law.

Any member visiting a different L.U. may be admitted to its meeting at the option of the L.U., provided that he presents his official receipt for dues showing he is a member in good standing and identifies himself as the rightful owner of such receipt, but he will have no voice or vote at such meeting.

Sec. 2. Any member desiring to transfer his membership may apply to his F[inancial] S[ecretary] for a traveling card for a stated time not to exceed three (3) months. The card shall be null and void unless deposited in some L.U. or renewed by the L.U. granting it on or before the date of its expiration. No fraction of a month shall be recognized, and all cards must date from the first date of the month and expire on the last day of the month.

* * *

Sec. 10. No L.U. shall refuse to accept promptly the card of and readmit any member into his home L.U. provide he has maintained his continuous good standing in the I.B.E.W. while absent from the L.U. The L.U. where a member was originally admitted into the I.B.E.W. shall be considered his home L.U. Where a L.U. or any part thereof has been amalgamated into another L.U. that L.U. shall be considered the home L.U.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Michael Cieklinski, and Allan Nairn, Petitioners, v. National Local Relations Board, Respondent.	**No. 05-75079** **NLRB Nos. 28-CB-6013 28-CB-5957** **MEMORANDUM****

On Petition for Review of an Order of the National Labor Relations Board

Submitted March 12, 2007***

Before: Kosinski, Leavy, and Bybee, Circuit Judges.

Michael Cieklinski and Allan Nairn petition pro se for review of a decision of the National Labor Relations Board ("NLRB") limiting an award of damages to identified traveling workers whose federal statutory rights had been violated by a local union. We dismiss the petition for review.

Petitioners lack standing to chall-enge the NLRB's order affirming the award of damages to petitioners, and setting aside the award of damages to unidentified

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* The Clerk shall amend the docket to reflect that Allan Nairn is also a Petitioner in this case.

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir.R. 36-3.

*** The panel unanimously finds this case suitable for decision without oral argument. See Fed.R.App.P. 34(a)(2).

traveling workers. See 29 U.S.C. § 160(f) (any person "aggrieved" by a final order of the NLRB may obtain review in court of appeals); *Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 610 (9th Cir. 2005) (a "plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties") (quoting *Warth v. Seldin*, 422 U. S. 490, 499 (1975).

We also lack jurisdiction to review the back-pay computation because petitioners did not exhaust their administrative remedies by appealing the computation to the General Counsel and then to the NLRB. *See* 29 C.F.R. § 102.53; *Nat'l Labor Relations Bd. v. Southeast Ass'n for Retarded Citizens, Inc.*, 666 F.2d 428, 432 (9th Cir. 1982) ("failure to exhaust administrative procedures ... precludes review of [an] issue" in a court of appeal) (citation omitted). Consequently, there is no final order of the NLRB for this court to review. See 29 U.S.C. § 160(f).

We deny all pending motions.

PETITION FOR REVIEW DISMISSED.